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1948.

File No. O. Essen. Commo.
48.



Legal DEPARTMENT
A BRANCH

K.S.R.
23/5.

Subject:—

P 212
75

opinions under the

Emergency Essential Commodities

and Cattle Control

Act; 1946

File No. O. Essen. Commodities
Std. Sectt. Slip 24 B a. 48

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1948.

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1915

K.S.R.

19/5.

Office of the R.L.A.

Re. purchase of
ground nut oil
cake.

Bombay Essential
Commodities and
Cattle (Control)
Act, 1946
and
Orders made
thereunder.

Agriculture and Rural Development Department

Notification No. 1623-G, dated the 21st August 1947 having been superseded and the delivery of the stock of oil cakes at the prescribed rate of Rs.80 per ton under that notification not having been claimed before its expiry, it would not now be legally feasible for Government to demand from the oil millers the delivery of stocks under that notification at the rate of Rs.80. Nor would it be legally feasible for Government to modify the notification dated the 5th December 1947 requiring the oil-millers to sell to Government the stocks at a rate of Rs.80 per ton when the rate now fixed is Rs.130 per ton. If however there are valid reasons for Government to believe that the rate of Rs.130 per ton fixed under the notification dated the 5th December 1947 is excessive, it would be competent for Government to modify that notification by reasonably reducing the rate.

Id. P.M. ~~2024~~ 312

Memorandum of Local Affairs.

D.R. to Agriculture and Rural Development Department
No. 63 coml, dated the 4th February 1948.

MM

SC. dated 18-5-'50.

(3)

Office of the R.I.A.

Whether "arms
and ammunitions"

can be added as an essential

commodity to

Schedule I of

Bombay Essential

Commodities, and

Cattle (Control)

Act, 1940.

are essential to the

the life of community

The entry 29 in List II is wide enough to

control the distribution of even arms, pro-

vided we have a suitable enactment for that

purpose. As it is, Bombay Essential Commodities

and Cattle (Control) Act, 1940 is only for re-

gulating the distribution of commodities which

and it would be difficult to maintain that arms

are essential to the life of the community in the

sense in which the Act uses that expression. It

would be outside the scope of the Act to include

arms and ammunitions in the Schedule by notifica-

tion under section 3.

Id. P.M.L. 317

Remembrancer of Legal Affairs,

U.N. to H.D., No. 7387 dated the 2nd August 1948

MI

50 dated 18-3-50

R.I. No 451-Conf. dated 11-10-48.

Submitted with reference to H.D. note at page 3 ante.

The Provincial Transport Officer in his letter stated that the representative of the Bombay Taxi Association have approached him to make taxi motors available at reasonable rates. Hence he suggests that the Government may issue a notification under section 3 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, so as to include the "taxi motors" in the Schedule I of the Act and then empower the B.T.Os. to make orders under section 4(2)(b) of the Act in respect of taxi motors by issuing orders under sec.3 of the said Act. However in view of the preamble to the Act H.D. opines that it would not be feasible to insert the item taxi motors in Schedule I to the Act. R.I.A. is requested to advise.

2. The preamble to the B.E.C.C (Control) Act, 1946, is as follows:-

"Whereas it is expedient to provide for the control and regulation of the production, movement, supply and distribution of certain commodities essential to the life of the community."

From this it would appear that the Act is intended to regulate the control etc. of commodities essential to the life of the community. The Act defines the words "essential commodity" as a commodity specified in Schedule I of the Act which in effect would mean that the discretion exercised by the Provincial Government under sec.3 would be final as to whether a commodity is an essential one as contemplated in the preamble to the Act. However it does appear

to be desirable to take such a liberal view in view of the preamble to the Act.

Commodity has been judicially defined as follows:-

"The word 'commodity' is one of extensive meaning denoting anything that is useful, convenient and serviceable. "(per Evans J in the Frederick VIII (1917)p.43 vide Words & Phrases Judicially Defined By R.Harrows p.473). The term 'commodity' in commerce means goods of any kind; but it is usually employed only for articles of the first necessity; it is a source of comfort and object of industry" (vide Iyer's Law Lexicon p.210).

It cannot be said that "taxi motors" is a commodity essential to the life of a community as contemplated in the preamble to the Act. It was held in a recent opinion of the R.L.A. (No.3154 dated 1st April 1947) that an oil engine is not an essential commodity within the meaning of clause (2) of section 2 of the Bombay Essential C.G.(Control)Act, 1946. Neither would it be possible to argue that taxi motors are essential in the same way as "Motor vehicles" which have been included in the Schedule I to the Act (by H.D.Notification No.6236/S(A) dated 4-9-46) because whereas the prices of Motor vehicles would materially affect the community as a whole the prices of the taxi motors would affect a negligible section of the community. Hence it appears that the view expressed by the H.D. appears to be correct and it would not be legally feasible to insert "taxi motors" in the Schedule to the Act (cf. R.L.A's opinion No. 7247 dated 2-6-1948). (In order to avoid any possible conflict, the question of amending the Act suitably so as to omit the words "essential to the life of the community" from the

preamble may be considered by Government so that it would be convenient for Govt. to control any commodity under sec. 2 when-ever such control is deemed necessary.)

~~J. Marmans~~ ^{Set-} 8/11

A.A.S.

As stated in the preamble, the Bombay Essential Commodities and Cattle (Control) Act, provides for "the control and regulation of the production, movement, supply and distribution of certain commodities essential to the life of the community, and for the control and regulation of trade and commerce therein, and ~~for~~ the maintenance, licensing and movement of cattle and the licensing of dealers in such commodities and cattle etc."

It would be difficult to maintain that taxi meters are commodities essential to the life of the community in the sense in which it is used in the Act. It would be outside the scope of the Act. The H.D. office view is correct and the papers may be "seen and returned".

Jd. E.P.B.
10/11

A.A.R.

Reply may be:-

seen and returned.

The view taken in Para 2 of H.D. office note is ~~correct~~ correct.

Jd. R.T.K. 11/11

R.L.A. P.M.-2204
11/11

U.R. to H.D. No. 10686 dated 15/11/1948.

MM

5C. dated 19-5-46.

Legal Department.

The question raised in this case is whether there is any method by which commodities which are subjected to orders under section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, can be delivered to or taken possession of by persons in whose favour or for whose benefit such orders are made. Sub-section (1) of section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, provides that Government may by a notified order provide for the production, supply and distribution of an essential commodity. Sub-section (2) provides that without prejudice to the generality of sub-section (1), an order can provide for any of the matters mentioned in clauses (a) to (f) of the said section. Clause (d) provides that an order made under this section may require any person holding stocks of an essential commodity to sell it at specified prices to a specified person or class of persons or in specified circumstances. None of the clauses (a) to (f) contains any provision that in case the person holding the stocks fails or refuses to deliver the commodities, the purchaser may be authorised to take possession thereof. But none of the specific clauses in sub-section (2) can in any way restrict or limit the powers exercisable by the Provincial Government under sub-section (1). That sub-section (1) empowers Government to pass orders regulating the distribution of commodities. Moreover clause (j) of sub-section (2) provides for the passing of orders relating to incidental or supplementary matters. It is a general principle of law that although the legislature is presumed to intend no alteration in the law beyond the immediate and specific purposes of an Act, such purposes are considered as including all the incidents or consequences strictly resulting from the enactment. Otherwise as pointed out by Mr. Justice (1947)

It appears that in this case there has been a clear contravention of notifications Nos. 410/A/IV and 410/DP/IV dated 30th September 1947 issued under section 3 of the Bombay Essential Commodities and (Little (Control) Act, 1946. Such contravention is made punishable under section 10, and under sub-section (2) of that section, any court trying such contravention may direct that any property in respect of which the court is satisfied that the order has been contravened etc. shall be forfeited to His Majesty. It would, therefore, be feasible to commence a prosecution and to approach the Court for making an order of forfeiture if necessary.

2. There is, however, no legal sanction for requiring the Company to bring back the consignment at their own cost. For, if the Company chooses to disobey such a direction, Government will not be able to enforce it, and will eventually be driven to a prosecution for the contravention of the notifications. I understand from the Secretary, A.R.D.D., that the Company is prepared to bring a like fresh consignment from England. If that be so, it is a matter of policy for Government to decide whether a prosecution should be launched and forfeiture of the engines insisted upon.

Sd. P.M.IAD. 16/11
Remembrancer of Legal Affairs

U.R. to A.R.D.D. No. 608 dated 11th November, 1948.

pretation of Statutes p. 356) the enactment might confer a mere illusory right. Thus in Lahore Electricity Supply Company Vs. The Province of Punjab, under the analogous provision in rule 81 of the Defence of India Rules, the Lahore High Court was inclined to hold that the said rule would empower Government to take possession and control the electrical undertaking which was the subject-matter of dispute. For these reasons it appears that under section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, an order which requires a person to sell a commodity to a particular person can provide that in case of the failure or refusal of the seller to deliver the commodity ordered to be sold, the purchaser may, on payment of or deposit of the price fixed with any particular officer, be given by the officer authorised delivery or possession of the commodity. Such a direction can be regarded as incidental or supplementary to such matters as are provided in clause (d) of sub-section (2) and can be defended as carrying out the object of distribution referred to in sub-section (1).

Id. J.R.D.

18/11

Additional Secretary to Government.

U.R. to Labour Department (5), No. 10958 dated the 20th November 1948

Submitted for Signature.

MM.

56. dated 19-5-'56.